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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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CC Docket No. 96-45 (Report to Congress)  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Federal-State Joint Board on )  
Universal Service )

**COMMENTS OF AMSC SUBSIDIARY CORPORATION**

AMSC Subsidiary Corporation ("AMSC") hereby submits these comments in connection with the Commission's Report to Congress on Universal Service.<sup>1</sup> These comments reflect the continuing concerns of AMSC as both a provider of the kinds of rural communications services that are to be supported by universal service funding (particularly remote fixed-site service and rural ambulance service) and as a contributor to such funds. Certain issues that AMSC has raised concerning eligibility for support have not yet been addressed by the Commission. In the case of remote fixed-site service, these include questions concerning eligibility of AMSC's resellers, the eligibility of carriers that charge on the basis of usage, and the requirements for local advertising. In the case of rural ambulance service, AMSC has asked the Commission to clarify its pricing requirement. With respect to universal service contributions, AMSC proposes that MSS providers contribute to the universal service fund based on an alternative contribution formula.

**Background**

AMSC is the entity authorized by the Commission in 1989 to construct, launch and operate the first dedicated U.S. MSS system.<sup>2</sup> The first AMSC satellite was launched in 1995.

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<sup>1</sup> Common Carrier Bureau Seeks Comment for Report to Congress on Universal Service Under the Telecommunications Act of 1996, *Public Notice*, DA 98-2 (rel. Jan. 5, 1998); Federal-State Joint Board on Universal Service, *Order*, CC Docket No. 96-45 (Report to Congress) (rel. Jan. 14, 1998) (extending comment and reply comment deadline).

<sup>2</sup> Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989); Final Decision on Remand, 7 FCC Rcd 266 (1992); *aff'd sub nom.* Aeronautical Radio, Inc. v.

and AMSC began offering service in early 1996. Today, AMSC, a Commercial Mobile Radio Service (“CMRS”) provider under the Commission’s rules, offers a full range of land, maritime, and aeronautical mobile satellite services, including voice and data and a unique multipoint dispatch service, throughout the contiguous United States, Alaska, Hawaii, the U.S. Virgin Islands, and coastal areas up to 200 miles offshore. The Commission has determined AMSC to be a non-dominant carrier and has characterized it as competitive with terrestrial CMRS providers.<sup>3/</sup>

AMSC’s MSS system has yielded significant public interest benefits.<sup>4/</sup> AMSC’s system for the first time provides voice and data communications services to people who live, work, or travel in rural and remote areas of the U.S. unserved by terrestrial technologies. No matter how remote an individual’s location, an AMSC terminal allows that person to communicate with any party who can be reached through the public switched telephone network. AMSC’s system offers the ability to meet rural public safety needs and provide communications to any area during emergencies and natural disasters.<sup>5/</sup>

Though primarily intended as a mobile service, it has always been expected that AMSC’s system also would be used to provide fixed-site telephone service to households without any

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FCC, 983, F.2d 275 (D.C. Cir. 1993).

<sup>3/</sup> Second Report and Order, 2 FCC Rcd 485, 489-90 (1987), clarified, 2 FCC Rcd 2417 (1987), *recon. denied*, 4 FCC Rcd 6029 (1989), *rev’d and remanded on other grounds sub nom.*, Aeronautical Radio, Inc. v. FCC, 928 F.2d 428 (D.C. Cir. 1991), Tentative Decision on Remand, 6 FCC Rcd 4900 (1991), Final Decision on Remand, 7 FCC Rcd 266 (1992), *aff’d sub nom.*, Aeronautical Radio, Inc. v. FCC, 983 F.2d 275 (D.C. Cir. 1993).

<sup>4/</sup> See, e.g., Notice of Proposed Rulemaking, IB Docket No. 96-132, at 6-7.

<sup>5/</sup> *Id.*

telephone service.<sup>6/</sup> Given the competitive and technological neutrality of the Commission's new universal service policy, AMSC should be able to gain eligibility for high cost area support for the provision of fixed-site service to residential and business customers in rural and remote areas.<sup>7/</sup> In addition to fixed-site service, AMSC can provide mobile telecommunications services to rural health care providers, whose telecommunications needs will be subsidized under the new program.

As a provider of interstate telecommunications, AMSC is required to contribute to the universal service fund. This contribution is equal to a percentage of AMSC's gross end-user telecommunications revenue.<sup>8/</sup>

AMSC has previously asked the Commission to modify or clarify certain policies related to carrier eligibility and the discounts available to rural health care provider.<sup>9/</sup> While the Commission's recent order on reconsideration responded to AMSC's request with respect to several of these issues, the Commission did not address certain other issues.<sup>10/</sup> AMSC now takes

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<sup>6/</sup> Notice of Proposed Rulemaking, 50 Fed Reg. 8149 (Feb. 28, 1985), para. 4; AMSC Authorization Order, para. 42.

<sup>7/</sup> Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776, paras. 47-49 (1997) ("Order").

<sup>8/</sup> Order at para. 854.

<sup>9/</sup> See AMSC Petition for Clarification or Reconsideration, CC Docket No. 96-45 (July 17, 1997); AMSC Comments on Petitions for Clarification or Reconsideration, CC Docket No. 96-45 (August 18, 1997).

<sup>10/</sup> Fourth Order on Reconsideration, Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (Dec. 30, 1997) ("Recon Order"). In this order, the Commission concluded that calls to and from a satellite provider's fixed-site subscribers, for which such subscribers pay a non-distance and non-usage sensitive rate, constitute local calling for purposes of universal service eligibility. Recon Order at para. 10. The Commission also ruled that to gain eligibility for such support, AMSC will have to demonstrate to the

(continued...)

this opportunity to reiterate its concerns on those issues to which the Commission has not yet responded, and to propose an alternative contribution formula for AMSC and other MSS providers.

## **Discussion**

### **I. Eligibility for Universal Service Support**

#### **A. MSS Resellers Should Be Eligible for Support**

In its May 1997 order on universal service, the Commission determined that a “pure” reseller of telecommunications service cannot gain eligibility for universal service support in a given service area. Order at 152. In addition, the Commission has determined that an eligible carrier that resells wholesale service to a customer cannot receive universal service support for that resale service. Order at para. 174. According to the Commission, support in either case would be unfair, as the resale carrier would have already “receive[d] the benefit of universal service support by purchasing wholesale services at a price based on the retail price of a service - a price that already includes the universal service support payment received by the incumbent provider.” Order at para. 161. In essence, this resale carrier would be receiving two per-line subsidies on each resold line.

AMSC agrees that it is appropriate to prevent such “double” recoveries. The Commission’s decision not to support resale service from **any** carrier, however, is overly rigid. Not all resellers will obtain wholesale services from incumbent LECs, or from carriers that are themselves already receiving universal service support for the same facilities. For instance, AMSC will not automatically receive subsidies just for having its facilities in place. Thus, as

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<sup>10</sup> (...continued)  
relevant state authorities that “exceptional circumstances” prevent it from offering access to all the elements of E911 service. Recon Order at para. 14.

long as AMSC is not claiming support for service to a given customer, an entity that resells AMSC's service should be able to gain eligibility and claim support for service to that customer.

**B. Carriers Whose Local Service Charges Are Usage-based Should Not Be Barred from Eligibility for Federal High-cost Area Support**

CMRS providers typically charge for service based on usage, and, unlike most wireline carriers, do not provide an unlimited amount of local service for a set monthly fee. The Commission should reconfirm the neutrality of its universal service framework by explicitly establishing that carriers that utilize usage-based billing for local traffic can become eligible for federal universal service support.

**C. MSS Providers Should Be Permitted to Advertise Nationally**

Under the Telecommunications Act of 1996 (the "Telecom Act"), in order to be eligible for universal service support, a carrier must advertise in media of general distribution throughout its entire service area the availability and price of its services. In the Order, the Commission does not specify what a carrier must do to satisfy this general requirement, instead leaving it to the states to establish any necessary guidelines. Order at para. 148. The Commission should clarify, however, that in the case of a nationwide system such as that of AMSC, a carrier may place an advertisement in a nationally circulated publication. The efficiency of a nationwide system will be lost if it must bear the expense of advertising locally in every area where it may provide service, even if that service is to a handful of subscribers.

**II. Support for AMSC's Rural Ambulance Service Should Be Set Based on the Rate for Ground-Based Urban Systems**

AMSC is able to efficiently provide mobile telecommunications capability to rural ambulance services and other emergency medical vehicles in rural areas. If AMSC is able to provide this MSS emergency communications capability at a discount, the technology could be

made more widely available. To fully realize these benefits, the Commission should clarify the rates at which rural health care providers are entitled to receive emergency mobile telecommunications services.

The Telecom Act requires that eligible health care providers be charged for telecommunications services at rates that are “reasonably comparable to rates charged for similar services in urban areas in that state” (the “urban rate”). Under the Commission’s policy, this urban rate is equal to the highest tariffed or publicly available rate actually being charged to commercial customers for similar services within the jurisdictional boundary of the nearest city of 50,000 or more in the state. Order at paras. 669-70.

The Commission should adopt a fair, market-oriented approach and establish that the urban services that are “similar” to AMSC’s rural emergency medical communications are the terrestrial mobile communications services typically used by ambulances and other emergency medical vehicles in those urban areas. This interpretation will furnish all potential providers of emergency mobile communications systems with the same subsidy, and will provide equivalent points of reference for all marketplace competitors. Under this approach, market forces and the relative cost-effectiveness of these competing technologies, rather than the government, can determine which mobile technology will be the most successful in rural and remote areas.<sup>11</sup>

### **III. The Commission Should Adopt an Alternative Formula for Assessing the Level of Contributions from MSS Providers**

In implementing the new universal service program, Congress directed the Commission

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<sup>11</sup> Under the Commission’s rules, after selecting a telecommunications carrier, the health care provider will be required to certify to the administrator that the chosen service is, to the best of its knowledge, the most cost-effective service available.

to ensure that all providers of telecommunications services make an “equitable and nondiscriminatory contribution” to the universal service fund and that contributions are assessed in a competitively neutral manner. In addition, the Commission has established that its universal service rules should be applied in a technologically neutral fashion, meaning that the rules “neither unfairly favor nor disfavor one technology over another.”<sup>12</sup>

In its May 1997 Order, the Commission decided to base interstate telecommunications carriers’ contributions to the universal service fund on a fixed percentage of their gross end-user telecommunications revenues. Order at 854. Because MSS providers’ satellite-based systems are much more costly than their terrestrial competitors and have rates that are several times greater, the use of gross revenues to calculate their universal service contributions results in an unfair and disproportionate burden on MSS providers’ ability to compete. Under the current contribution formula, AMSC and other MSS providers would be required to contribute to the universal service fund several times more per-minute of voice service and per-kilobyte of data service than the terrestrial systems with which they compete.

To remedy this disproportionate impact of the universal service rules, AMSC proposes that the Commission assess the universal service contributions of MSS providers at a level that is equivalent on a per-minute basis, for voice service, and a per-kilobyte basis, for two-way mobile data services, to the contributions of terrestrial-based wireless service providers. This proposal maintains competitive neutrality between different technologies. This alternative contribution formula also would be consistent with the congressional mandate that all contributions to the

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<sup>12</sup> Section 254(b)(7) of the Act provides that the Joint Board and the Commission can add to the six principles listed in that section as those upon which universal service policies shall be based. 47 U.S.C § 254(b)(7).

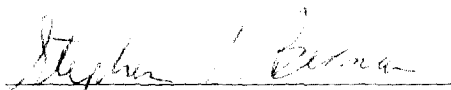
universal service fund be assessed in an "equitable" manner.<sup>13</sup>

### Conclusion

Based on the foregoing, AMSC respectfully urges the Commission to include consideration of these issues in its Report to Congress.

Respectfully submitted,

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<sup>13</sup> 47 U.S.C. § 254(b)(4).